

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS

CHARLES B. ZIMMERMAN)
)
 Plaintiff,)
)
 vs.) Case No.
)
 CSX TRANSPORTATION, INC.)
)
 Serve at: CT Corporation)
 208 S. LaSalle Street, Ste. 814)
 Chicago, IL 60604-1101)
)
 Defendant.)

**PLAINTIFF DEMANDS JURY
BY TRIAL ON ALL COUNTS**

COMPLAINT

Federal Employers' Liability Act

COMES NOW Plaintiff, Charles Zimmerman, by and through his attorney, Daniel R. Francis of the Francis Law Firm, L.L.C., and for his Complaint against the Defendant, CSX Transportation, Inc., corporation, states:

1. That the Defendant, CSX Transportation, Inc., a corporation, is now and was at all times hereinafter mentioned a railroad corporation duly organized and existing according to law to engage in, and was engaged in, business as a common carrier by railroad in interstate commerce in the States of Illinois and other states of the United States.

2. That at all times hereinafter mentioned, Plaintiff, Charles Zimmerman, was employed by the Defendant, CSX Transportation, Inc., in interstate commerce and worked into Illinois and incurred injury while in said state and other states.

3. That on or about June 22, 2004 while employed as an engineer for the Defendant, CSX Transportation, Inc. in a railroad tunnel and during the course of his employment as an engineer for the Defendant, Plaintiff was injured in the performance of his duties when he suffered smoke inhalation and carbon monoxide and diesel exhaust and diesel fuel fumes while stranded in a one mile long tunnel, known as Bakers Tunnel, due to the train stalling on HD subdivision on CSX line. Defendant knew or should have known that the engine leading the train was defective. Plaintiff was directly exposed to burning chemicals, materials, track structure, carbon monoxide, and other harmful irritants and suffered new injuries and aggravated previous conditions.

4. Plaintiff states that his injuries and damages were due in whole or in part as a result of the negligent acts or omissions of the Defendant CSX Transportation, Inc., in one or more of the following particulars:

- a.) Failing to provide Plaintiff with a safe place to work; or
- b.) Failing to provide Plaintiff with safe conditions for work;
- c.) Failing to provide Plaintiff with safe equipment;
- d.) Failing to inspect the work area and equipment prior to Plaintiff working there;

- e.) Failing to provide Plaintiff with a safe methods of work; or
- f.) Failing to provide Plaintiff with sufficient help.

5. As a result of the aforementioned conduct of the Defendant, CSX Transportation, Inc., Plaintiff was caused to suffer the following injuries and damages, including, but not limited to Plaintiff's respiratory system and upper respiratory irritation and the related structures thereto. Plaintiff has lost the wages of his employment and will in the future lose such wages; Plaintiff has expended or obligated himself for necessary and reasonable medical expenses and hospital care and will in the future be caused to expend further such sums; Plaintiff's ability to work, labor, and enjoy the normal pursuits in life have been permanently damaged. Plaintiff has suffered pain and suffering, physical discomfort and injury, and emotional injury.

WHEREFORE, Plaintiff, Charles Zimmerman, prays Judgment against the Defendant, CSX Transportation, Inc., for a sum fair and reasonable under the circumstances in excess of the jurisdictional minimum of the Court, together with his costs herein expended.

COUNT II

(Boiler Inspection Act)

COMES NOW Plaintiff, Charles Zimmerman, by and through his attorney, Daniel R. Francis of the Francis Law Firm, L.L.C., and for Count II of his cause of action against Defendant, CSX Transportation, Inc., a corporation, states:

1. Defendant, CSX Transportation, Inc., a corporation, is now and was at all times hereinafter mentioned a corporation duly organized and existing according to law and duly

authorized according to law to engage in, and was engaged in, business as a common carrier by railroad in interstate commerce in the State of Illinois and other states of the United States.

2. That at all times herein mentioned Plaintiff, Charles Zimmerman, was employed by the Defendant in interstate commerce.

3. That on or about June 22, 2004, while employed as an engineer for the Defendant, CSX Transportation, Inc. and during the course of his employment as an engineer for the Defendant, Plaintiff was injured in the performance of his duties when he suffered smoke inhalation while stranded in a one mile long tunnel, known as Bakers Tunnel, due to the train stalling on the HD subdivision on the CSX line. Defendant knew or should have known that the "in use" locomotive engine leading the train was defective. This locomotive was not in proper condition and could not be safely operated without unnecessary peril of life and limb. Said locomotive violated the Locomotive Inspection Act, 49 U.S.C. 20701 et seq. and the Federal Railroad Safety Regulations promulgated thereto, including 49 C.F.R. 229.23, 229.25, 229.41, 229.43, 229.45, and 229.119.

5. As a result of the aforementioned conduct of the Defendant, Plaintiff was caused to suffer the following serious, painful, and permanent injuries, to-wit: Plaintiff suffered injuries to his respiratory system and upper respiratory irritation and the adjacent structures thereto; Plaintiff has been required to seek medical treatment and will so in the future; Plaintiff has been required to undergo various diagnostic tests and will so in the future; Plaintiff has lost the wages of his employment and will in the future lose further wages; Plaintiff has sustained injuries and pain and suffering and will so in the future; Plaintiff has expended or obligated himself for necessary and reasonable medical expenses and hospital care and will so in the future; Plaintiff's ability to work, labor and enjoy the normal pursuits of life has been impaired and lessened all to Plaintiff's damages in a sum in excess of this Court's minimum jurisdiction.

WHEREFORE, Plaintiff, Charles Zimmerman, prays judgment in Count II against Defendant, CSX, for a sum in excess of the Court's jurisdictional minimum, together with his costs herein expended.

COUNT III

Wrist Injuries

COMES NOW Plaintiff, Charles Zimmerman, by and through his undersigned attorney, Daniel R. Francis of the Francis Law Firm, L.L.C., and for Count III of his cause of action against Defendant, CSX Transportation, Inc., a corporation, states:

1. That the Defendant, CSX Transportation, Inc., a corporation, is a railroad corporation doing business in the State of Illinois, and in the St. Clair County. CSX Transportation, Inc. is the current employer of Plaintiff.
2. That the Plaintiff, Charles Zimmerman, at all times mentioned herein, was an employee of Defendant, CSX Transportation, Inc., in numerous states, including Indiana and Illinois, and was working as an engineer performing work in connection with railroad tracts and structures of the Defendant utilized by it in interstate commerce of the United States.
3. That at all times mentioned herein, Plaintiff, Charles Zimmerman, and Defendant, CSX, were then and there employed and engaged in interstate commerce and by reason thereof, their mutual and respective rights and liabilities were governed by a certain Act of Congress known as the Federal Employers' Liability Act, 45 U.S.C., Section 51, et seq.
4. That throughout the time Plaintiff, Charles Zimmerman, was employed by the Defendant, CSX, was required to make hand motions and activities and was required to work with equipment which had excessive vibration, stress and awkward positions, causing Plaintiff's hands to be injured and requiring medical treatment for his wrists and nerve tendonitis.
5. That at said time and place, the Defendant, CSX Transportation, Inc., was guilty of one or more of the following acts or omissions of negligence:

- a.) Failed to furnish Plaintiff with a reasonably safe place to work;
- b.) Failed to furnish Plaintiff with reasonably safe equipment with which to do his work;
- c.) Failed to take reasonable action to prevent the type of stresses and physical positions that caused the injury; and
- d.) Failed to, in any way, provide equipment to mitigate the effect of its equipment and operations from repetitive hand motion, vibration and stress;
- e.) Failed to provide reasonably safe equipment;
- f.) Failed to take reasonable action to prevent the type of stresses and vibrations that caused said injuries; and
- g.) Failed to provide sufficient safety equipment to prevent stresses from being transferred to his wrists and upper extremities.

6. That as a result, in whole or in part, of the aforementioned negligence of the

Defendant, CSX Transportation, Inc., the Plaintiff Charles Zimmerman, has sustained wrist tendonitis which has caused and will continue to cause Plaintiff to sustain pain, suffering, and mental anguish.

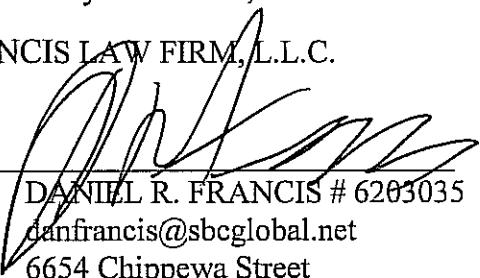
7. The Plaintiff has also been obliged and will probably be obliged to spend large sums of money in hospital and medical expenses while endeavoring to cure said injuries. This includes medical care and treatment. Plaintiff was caused to undergo medical treatment and painful tests; Plaintiff has expended or obligated himself for necessary and reasonable medical expenses and hospital care and will in the future be caused to expend further sums; Plaintiff has lost the wages of his employment and will in the future lose further such wages; Plaintiff's ability to work, labor, and enjoy the normal pursuits of life has been impaired and lessened, all to Plaintiff's damage.

WHEREFORE, Plaintiff, Charles Zimmerman, prays that this Court enter Judgment

Case 3:07-cv-00449-WDS-DGW Document 2 Filed 06/22/07 Page 7 of 7 Page ID #10
against the Defendant, CSX Transportation, Inc., for a sum fair and reasonable under the
circumstances in excess of the Court's jurisdictional minimum, together with Plaintiff's costs
herein expended.

Respectfully Submitted,

FRANCIS LAW FIRM, L.L.C.

By: 

DANIEL R. FRANCIS # 6203035
danfrancis@sbcglobal.net
6654 Chippewa Street
St. Louis, Missouri 63109
(314) 752-3600
(314) 457-9559 Facsimile

Attorney for Plaintiff